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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
 Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 30th April, 2012:—

BILL NO. 51 OF 2012

A Bill further to amend the National Housing Bank Act, 1987.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

53 of 1987.

1. (1) This Act may be called the National Housing Bank (Amendment) Act, 2012.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. In section 2 of the National Housing Bank Act, 1987 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(a) after clause (b), the following clause shall be inserted, namely:—

1 of 1956.

(ba) “company” means a company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of that Act; ;

(b) in clause (d), for the words “which primarily transacts or”, the words “which transacts either in whole or in part and” shall be substituted.

3. In section 3 of the principal Act, in sub-section (3), for the words “Bombay or at such other place as the Reserve Bank”, the words “Mumbai or at such other place as the Central Government” shall be substituted.

Amendment of section 3.

Amendment
of section 4.

4. In section 4 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that the Central Government may, by notification, increase the authorised capital to such amount as may be specified in the notification, from time to time.”.

Insertion of
new sections
4A and 4B.

5. After section 4 of the principal Act, the following sections shall be inserted, namely:—

“4A. The issued capital of the National Housing Bank, which has been subscribed by the Reserve Bank as on the date immediately preceding the commencement of section 5 of the National Housing Bank (Amendment) Act, 2012, shall, on such commencement, stand transferred to, and vest in, the Central Government.

Transfer of
capital to Central
Government.

4B. The Reserve Bank shall be given by the Central Government, in cash, for the transfer to, and vesting in, the Central Government of the issued capital of the National Housing Bank which has been subscribed by the Reserve Bank, an amount equal to the face value of the said subscribed capital.”.

Amendment
of section 6.

6. In section 6 of the principal Act,—

(a) in sub-section (1), for clause (d), the following clause shall be substituted, namely:—

“(d) one director to be nominated by the Reserve Bank;”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Chairman, the Managing Director and other directors [excluding the directors referred to in clauses (ca) and (d)] shall be appointed by the Central Government:

Provided that the Chairman and the Managing Director shall be appointed in consultation with the Reserve Bank.”.

Amendment
of section 7.

7. In section 7 of the principal Act, in sub-section (5), in the proviso, for the words “or a director of the Reserve Bank”, the words “or an official of the Reserve Bank”, shall be substituted.

Amendment
of section 14.

8. In section 14 of the principal Act,—

(a) in clause (b), after the words “housing finance institutions,”, the words “non-banking financial companies,” shall be inserted;

(b) after clause (b), the following *Explanation* shall be inserted, namely:—

Explanation.— For the purposes of this clause, the expression “housing activities” includes acquisition, construction, reconstruction, purchase, repair or renewal of a residential house and all off site and on site housing related activities or incidental thereto.”;

(c) for clause (ea), the following clause shall be substituted, namely:—

“(ea) buying, selling or otherwise dealing in any loans or advances relating to housing activities secured by mortgage or charge on immovable property;”;

(d) in clause (f), after the word “companies”, the words “including mortgage guarantee companies, securitisation companies, reconstruction companies and credit information companies” shall be inserted;

(e) clause (k) shall be omitted.

46 of 1973.
42 of 1999.

9. In section 16 of the principal Act, in sub-section (1), for the words and figures "Foreign Exchange Regulation Act, 1973", the words and figures "Foreign Exchange Management Act, 1999" shall be substituted.

Amendment
of section 16.

10. In section 16B of the principal Act,—

(a) in sub-section (1), after the words "such institution to the National Housing Bank", the words "as per the repayment schedule fixed by the National Housing Bank" shall be inserted;

Amendment
of section
16B.

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

'(3) Notwithstanding anything to the contrary contained in any other law for the time being in force, where a liquidator is appointed for winding up a borrowing institution, it shall be the duty of the liquidator to forthwith pass on to the National Housing Bank, the sums recovered by the borrowing institution or the liquidator, as the case may be, in repayment or realisation of the loans and advances refinanced either wholly or partly by the National Housing Bank to the extent the refinance is outstanding and the National Housing Bank shall be entitled to enforce the securities held by the borrowing institution in trust for the National Housing Bank as if every reference to the borrowing institution in any contract, security or other document obtained by the borrowing institution is a reference to the National Housing Bank and accordingly, the National Housing Bank shall be entitled to recover the balance sums due under such loans and advances from the constituents of the borrowing institution and any discharge given by the National Housing Bank to such constituent shall be a valid discharge and the liquidator shall, on demand made by the National Housing Bank, deliver to it all such contracts, securities and other documents, for due enforcement thereof by the National Housing Bank.

Explanation.—For the purposes of this sub-section, the word "liquidator" shall include liquidator or a provisional liquidator or any person or authority entrusted with the duty of liquidating the borrowing institution.'

11. In Chapter V of the principal Act, in the heading, for the words "RECEIVING DEPOSITS", the words "WHICH ARE COMPANIES" shall be substituted.

Amendment
of heading of
Chapter V.

12. In section 29A of the principal Act,—

(a) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

Amendment
of section
29A.

"(b) having the net owned fund of two hundred lakh rupees or such other higher amount as the Reserve Bank may, by notification, specify from time to time.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Every housing finance institution which is a company shall make an application for registration to the Reserve Bank in such form as may be specified by the Reserve Bank:

Provided that an application made by a housing finance institution which is a company under this sub-section to the National Housing Bank and pending for consideration with the National Housing Bank as on the date of commencement of the National Housing Bank (Amendment) Act, 2012, shall be transferred by the National Housing Bank to the Reserve Bank and thereupon the application shall be deemed to have been made under the provisions of this sub-section and shall be dealt with accordingly:

Provided further that the provisions of this sub-section shall not apply to the housing finance institution which is a company having a valid registration

certificate granted under sub-section (5) on the date of commencement of the National Housing Bank (Amendment) Act, 2012 and such housing finance institution shall be deemed to have been granted a certificate of registration under the provision of this Act.”;

(c) sub-section (3) shall be omitted;

(d) in sub-sections (4) and (5), for the words “National Housing Bank”, wherever they occur, the words “Reserve Bank” shall be substituted;

(e) in sub-section (6),—

(i) for the words “National Housing Bank may cancel”, the words “Reserve Bank may cancel” shall be substituted;

(ii) in clause (iv), for the words “National Housing Bank” wherever they occur, the words “Reserve Bank or the National Housing Bank” shall be substituted;

(iii) in clause (v), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted;

(iv) in the proviso,—

(A) for the words “housing finance institution” at both the places where they occur, the words “housing finance institution which is a company” shall be substituted;

(B) for the words “National Housing Bank” at both the places, where they occur, the words “Reserve Bank” shall be substituted;

(f) in sub-section (7), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted;

(g) in the *Explanation*, in clause (1), in sub-clause (b), in item (1), for sub-item (iii), the following sub-item shall be substituted, namely:—

“(iii) all other non-banking financial companies; and”.

Amendment
of section
29B.

13. In section 29B of the principal Act,—

(a) for the words “housing finance institution”, wherever they occur, the words “housing finance institution which is a company” shall be substituted;

(b) in sub-section (1), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted;

(c) in sub-section (2), for the words “such higher percentage not exceeding twenty-five per cent., as the National Housing Bank may”, the words “such higher percentage not exceeding twenty-five per cent., as the Reserve Bank may” shall be substituted;

(d) in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that in the case of submission of return to the National Housing Bank pursuant to the above provision a copy shall also be furnished to the Reserve Bank.”.

Amendment
of section
29C.

14. In section 29C of the principal Act,—

(a) in sub-section (2),—

(i) for the words “specified by the National Housing Bank”, the words “specified by the Reserve Bank” shall be substituted;

(ii) for the words "reported to the National Housing Bank", the words "reported to the National Housing Bank and the Reserve Bank" shall be substituted;

(b) in sub-section (3), for the words "the National Housing Bank", the words "the Reserve Bank" shall be substituted.

15. For section 30 of the principal Act, the following section shall be substituted, namely:—

"30. The Reserve Bank may, if it considers necessary in the public interest so to do, by general or special order,—

(a) regulate or prohibit the issue by any housing finance institution which is a company of any prospectus or advertisement soliciting deposits of money from the public; and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued."

16. For section 30A of the principal Act, the following section shall be substituted, namely:—

"30A. (1) If the Reserve Bank is satisfied that, in the public interest or to regulate the housing finance system of the country to its advantage or to prevent the affairs of any housing finance institution which is a company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of such housing finance institutions, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the housing finance institution which is a company relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a housing finance institution which is a company or a group of such housing finance institutions or housing finance institutions which are companies generally, as the case may be, and such housing finance institutions shall be bound to follow the policy so determined and the direction so issued.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Reserve Bank may give directions to housing finance institutions which are companies generally or to a group of such housing finance institutions or to any housing finance institution which is a company in particular as to—

(a) the purpose for which advances or other fund-based or non-fund-based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the housing finance institution and other relevant considerations, may be made by that housing finance institution to any person or a company or to a group of companies."

17. For section 31 of the principal Act, the following section shall be substituted, namely:—

"31. (1) The National Housing Bank may at any time direct that every housing finance institution which is a company accepting deposits shall furnish to the National Housing Bank in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by such housing finance institution, as may be specified by the National Housing Bank by general or special order.

Substitution of new section for section 30.

Reserve Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money.

Substitution of new section for section 30A.

Power of Reserve Bank to determine policy and issue directions.

Substitution of new section for section 31.

Power to collect information from housing finance institutions as to deposits and give directions.

(2) Every housing finance institution which is a company receiving deposits shall submit a copy of the statements, information or particulars referred to in sub-section (1) also to the Reserve Bank.

(3) Without prejudice to the generality of the power vested in the National Housing Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1), may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, such deposits are received.

(4) The Reserve Bank may, if it considers necessary in the public interest so to do, give directions to housing finance institutions which are companies accepting deposits either generally or to any group of such housing finance institutions accepting deposits, and in particular, in respect of any matters relating to, or connected with, the receipt of deposits, including credit rating of the housing finance institution which is a company accepting deposits, the rates of interest payable on such deposits, and the periods for which deposits may be received.

(5) If any housing finance institution which is a company accepting deposits fails to comply with any direction given under sub-section (4), the National Housing Bank may prohibit the acceptance of deposits by that housing finance institution.

(6) If any housing finance institution which is a company accepting deposit fails to comply with any direction given under sub-section (4), the Reserve Bank may also prohibit the acceptance of deposit by that housing finance institution.

(7) Every housing finance institution which is a company receiving deposits, shall, if so required by the National Housing Bank and within such time as the National Housing Bank may specify, cause to be sent at the cost of such housing finance institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the housing finance institution which is a company holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the National Housing Bank.”.

18. For section 32 of the principal Act, the following section shall be substituted, namely:—

“32. Every housing finance institution which is a company shall furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.”.

Substitution of new section for section 32.

Duty of housing finance institutions to furnish statements, etc.

Amendment of section 33.

19. In section 33 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “housing finance institution” wherever they occur, the words “housing finance institution which is a company” shall be substituted;

(ii) after the words “the National Housing Bank” at both the places where they occur, the words “and the Reserve Bank” shall be inserted;

(b) in sub-section (1A), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted;

(c) in sub-section (2), after the words “the National Housing Bank” at both the places where they occur, the words “and the Reserve Bank” shall be inserted;

(d) in sub-sections (3) and (4), after the words “the National Housing Bank”, wherever they occur, the words “or the Reserve Bank, as the case may be,”, shall be inserted.

20. For section 33A of the principal Act, the following section shall be substituted, namely:—

“33A. (1) If any housing finance institution which is a company violates the provisions of any section or fails to comply with any direction or order given by the National Housing Bank or the Reserve Bank, under any of the provisions of this Chapter, the National Housing Bank or the Reserve Bank, as the case may be, may prohibit such housing finance institution from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the National Housing Bank on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the housing finance institution which is a company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the National Housing Bank for such period not exceeding six months from the date of the order.”.

21. In section 33B of the principal Act,—

(a) in sub-section (1), in clause (c), after the words “the National Housing Bank”, the words “or the Reserve Bank” shall be inserted;

(b) in sub-section (3), after the words “the Registrar of Companies”, the words “and the Reserve Bank” shall be inserted.

Amendment of section 33B.

22. In section 34 of the principal Act,—

(a) for the words “housing finance institution accepting deposits” wherever they occur, the words “housing finance institution which is a company” shall be substituted;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) The National Housing Bank shall submit a copy of the report of inspection referred to in sub-section (1) to the Reserve Bank.

Amendment of section 34.

(5) The powers exercisable by the National Housing Bank under this section may (without prejudice to the exercise of such powers by the National Housing Bank whenever it considers necessary so to do), be exercised by the Reserve Bank, and accordingly, sub-sections (1) to (3) shall apply as if every reference therein to the National Housing Bank included also a reference to the Reserve Bank.”.

23. In section 35 of the principal Act,—

(a) for the words “on behalf of any housing finance institution”, the words “on behalf of any housing finance institution which is a company” shall be substituted;

(b) in clause (b), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted.

Amendment of section 35.

24. In section 35A of the principal Act,—

(a) for the words “housing finance institution”, wherever they occur, the words “housing finance institution which is a company” shall be substituted;

(b) after the words “the National Housing Bank”, wherever they occur, the words “or the Reserve Bank, as the case may be,” shall be inserted.

Amendment of section 35A.

25. For section 35B of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 35B.

Substitution of new section for section 33A.

Power to prohibit acceptance of deposit and alienation of assets.

Power of Reserve Bank to exempt any housing finance institution.

“35B. (1) The Reserve Bank on being satisfied that it is necessary so to do, may, declare by notification that any or all the provisions of this Chapter shall not apply to a housing finance institution which is a company or a group of such housing finance institutions either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.”.

Amendment of section 36A.

26. In section 36A of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where a housing finance institution which is a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956, may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do, to safeguard the interests of the company, the depositors or in the public interest, direct, by order, such housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

1 of 1956.

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to such housing finance institution and the other persons interested in the matter.”.

Amendment of section 36B.

27. In section 36B of the principal Act, for the words “housing finance institution”, wherever they occur, the words “housing finance institution which is a company” shall be substituted.

Omission of Chapter VA.

28. Chapter VA of the principal Act shall be omitted.

Amendment of section 37.

29. In section 37 of the principal Act, in sub-section (2), for the words “Reserve Bank”, the words “Central Government” shall be substituted.

Amendment of section 38.

30. In section 38 of the principal Act, in sub-section (2), for the words “thirtieth day of June, each year”, the words “thirty-first day of March, each year” shall be substituted.

Substitution of new section for section 39.

31. For section 39 of the principal Act, the following section shall be substituted, namely:—

Disposal of surplus.

“39. After making provision for bad and doubtful debts, depreciation of assets and all other matters for which provision is necessary or expedient or which is usually provided for by the bankers and for the funds referred to in section 37, the National Housing Bank shall transfer the balance of surplus, in case the Central Government holds the whole of the issued capital of the National Housing Bank, to the Central Government and in other cases, to the Central Government and any other person holding the issued capital proportionately as may be decided by the Board.”.

Amendment of section 40.

32. In section 40 of the principal Act, in sub-section (1), for the words “who shall be appointed by the Reserve Bank, for such term and on such remuneration as the Reserve Bank may fix”, the words “who shall be appointed by the Central Government in consultation with the Reserve Bank, for such term and on such remuneration as the Central Government may fix” shall be substituted.

Amendment of section 41.

33. In section 41 of the principal Act, for the words “the Reserve Bank” at both the places, where they occur, the words “the Reserve Bank and the Central Government” shall be substituted.

Amendment of section 42.

34. Section 42 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

“(2) For the purpose of ensuring compliance with the provisions of sub-section (1), the National Housing Bank may require any authority or organisation or institution, engaged in housing activities or the financing thereto, to furnish to it such information or statements or particulars relating to housing as may be specified by the National Housing Bank.

(3) Every authority or organisation or institution shall furnish the information or statements or particulars called for by the National Housing Bank and comply with any direction given to it by the National Housing Bank under this section.”.

35. In section 44 of the principal Act, in sub-section (1), after the words “National Housing Bank” at both the places, where they occur, the words “or the Reserve Bank, as the case may be,” shall be inserted.

Amendment of section 44.

36. In section 46 of the principal Act, after the words “the National Housing Bank” wherever they occur, the words “or the Reserve Bank” shall be inserted.

Amendment of section 46.

37. In section 49 of the principal Act,—

Amendment of section 49.

(a) in sub-section (2B), after the words “the National Housing Bank”, the words “or the Reserve Bank” shall be inserted;

(b) in sub-section (2C), for the words “any order made by the authorised officer”, the words “any order made by the Company Law Board” shall be substituted;

(c) in sub-section (3), in clause (aa), after the words “the National Housing Bank”, the words “or the Reserve Bank” shall be inserted.

38. In section 51 of the principal Act,—

Amendment of section 51.

(a) in sub-section (1),—

(i) for the words “the National Housing Bank, generally”, the words “the National Housing Bank or the Reserve Bank, generally” shall be substituted;

(ii) for the words “in this behalf by the National Housing Bank”, the words “in this behalf by the National Housing Bank or the Reserve Bank, as the case may be,” shall be substituted;

(b) in sub-section (2), for the words “of the National Housing Bank”, the words “of the National Housing Bank or the Reserve Bank, as the case may be,” shall be substituted.

39. In section 52 of the principal Act, in clause (b), for the words “housing finance institution”, the words “housing finance institution which is a company” shall be substituted.

Amendment of section 52.

40. For section 52A of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 52A.

Power to impose penalty.

“52A. (1) Notwithstanding anything contained in section 49, if the contravention or default of the nature referred to in section 49 is committed by a housing finance institution which is a company, the National Housing Bank or the Reserve Bank, as the case may be, may impose on such company—

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (2A) or clause

(a) or clause (aa) of sub-section (3) of section 49, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such

contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the National Housing Bank or the Reserve Bank, as the case may be, shall serve a notice on the housing finance institution which is a company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such housing finance institution.

(3) Any penalty imposed by the National Housing Bank or the Reserve Bank, as the case may be, under this section shall be payable within a period of thirty days from the date on which notice issued by the National Housing Bank or the Reserve Bank, as the case may be, demanding payment of the sum is served on the housing finance institution which is a company and, in the event of failure of such housing finance institution to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of such housing finance institution is situated:

Provided that no such direction shall be made, except on an application made by an officer of the National Housing Bank or the Reserve Bank, as the case may be, authorised in this behalf, to the principal civil court.

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the housing finance institution which is a company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any housing finance institution which is a company in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the National Housing Bank or the Reserve Bank, as the case may be, under this section.

(6) Where any complaint has been filed against a housing finance institution which is a company in a court in respect of contravention or default of the nature referred to in section 49, no proceedings for imposition of penalty against such housing finance institution shall be taken under this section.”.

Omission of section 54A.

41. Section 54A of the principal Act shall be omitted.

Amendment of section 55.

42. In section 55 of the principal Act,—

(a) in sub-section (1), the words “the Reserve Bank and in consultation with” shall be omitted;

(b) in sub-section (2), clauses (f), (fa), (fb), (fc) and (fd) shall be omitted.

Amendment of Act 54 of 2002.

43. In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in sub-section (1), in clause (m), after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iiiia) any housing finance institution which is a company registered under section 29A of the National Housing Bank Act, 1987:

53 of 1987.

Provided that any housing finance institution specified, by notification, under sub-clause (iv) of this clause, shall be deemed to be included as a housing finance institution under this sub-clause;”.

STATEMENT OF OBJECTS AND REASONS

The National Housing Bank Act, 1987 (the NHB Act) was enacted to establish the National Housing Bank to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions. The NHB Act was last amended in 2000 to enable the Central Government to increase the authorised capital of the Bank in consultation with the Reserve Bank of India up to two thousand crore rupees and issue the increased authorised capital to the Reserve Bank, the Central Government, scheduled banks, public financial institutions, housing finance institutions or such other institutions as may be approved by the Central Government in such manner that the institutions owned and controlled by the Central Government shall hold in aggregate at any time not less than fifty per cent. of the issued capital of the National Housing Bank.

2. The issued capital of the Bank as on date is four hundred fifty crore rupees and is fully subscribed by the Reserve Bank. In order to enable the Reserve Bank to focus on its regulatory and supervisory functions and to avoid conflict of ownership and regulatory role, it is proposed to transfer the shareholding of the Reserve Bank in the National Housing Bank to the Central Government. It is also proposed to provide for transfer of surplus by the National Housing Bank to the Central Government in place of the Reserve Bank consequent upon the transfer of ownership. Further, it is proposed to confer power upon the Central Government to increase the authorised capital of the National Housing Bank to such amount, as may be specified by notification, from time to time.

3. To ensure uniform control over non-banking financial companies including housing finance companies, the registration and regulation related powers over housing finance companies are proposed to be transferred to the Reserve Bank. The National Housing Bank will henceforth concentrate on supervision and financing of such institutions.

4. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the said Act), was enacted to provide for recovery of the dues of the scheduled banks, public financial institutions and other notified financial institutions. The Central Government has notified number of housing finance institutions which are companies registered under the NHB Act as financial institutions under the said Act. It is proposed to amend the said Act as to make a provision to cover all the housing finance institutions which are companies registered under the NHB Act for the purposes of the said Act to provide them level playing field.

5. In the light of the experience gained in the operations of the National Housing Bank, it is felt necessary to make certain amendment in the NHB Act for the smooth working of the National Housing Bank and to authorise it to undertake certain other business of financing non-banking financial companies for their housing activities, for securitisation of loans and advances and to promote mortgage guarantee companies, credit information companies, etc.

6. The National Housing Bank (Amendment) Bill, 2012 *inter alia*, provide for—

(a) insertion of new sections 4A and 4B in the NHB Act to enable the transfer of the issued capital subscribed by the Reserve Bank to the Central Government as mentioned in paragraph 2 above and payment by the Central Government to the Reserve Bank an amount equal to the face value of the said subscribed capital;

(b) amendment of section 6 of the NHB Act for the purpose of nomination of one director by the Reserve Bank instead of two directors and to dispense with the

requirement of consultation with the Reserve Bank in appointment of the directors other than the Chairman and the Managing Director;

(c) amendment of section 14 of the NHB Act, to insert the expression "non-banking financial companies" in clause (b) thereof so as to extend refinancing facilities to these companies; define the expression "housing activities" and in clause (f) insert the expressions "including mortgage guarantee companies, securitisation companies, reconstruction companies and credit information companies" so as to enable the National Housing Bank to do business in relation to such companies;

(d) conferring of powers relating to registration, maintenance of certain percentage of assets in liquid assets, creation of a reserve fund, regulate or prohibit issue of prospectus or advertisement, to determine policy and issue direction under sections 29A, 29B, 29C, 30 and 30A of the NHB Act upon the Reserve Bank in place of the National Housing Bank;

(e) conferring of powers, relating to, power and duties of auditors of housing finance companies, to prohibit acceptance of deposit and alienation of assets, inspection of housing finance companies and impose penalties under sections 33, 33A, 34 and 52A of the NHB Act, upon the Reserve Bank in addition to the National Housing Bank;

(f) confer powers upon the Company Law Board constituted under section 10E of the Companies Act, 1956 to direct housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order;

(g) omission of Chapter VA relating to recovery of dues of the approved institutions consequent upon the proposed amendments in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(h) to enable the Board of the National Housing Bank to cause the books and accounts of the National Housing Bank to be balanced and closed as on the thirty-first day of March of each year in place of thirtieth day of June of each year;

(i) insertion of new sub-clause (iiia) in clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 so as to extend the provisions of the said Act to any housing finance institution which is a company and is registered under the NHB Act.

7. The notes on clauses explain in detail the various provisions of the Bill.

8. The Bill seeks to achieve the aforesaid objects.

NEW DELHI;

The 9th April, 2012.

PRANAB MUKHERJEE.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA**

[Copy of D.O. No. 24/11/2011-IF-II dated 13 April, 2012 from Shri Pranab Mukherjee, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the National Housing Bank (Amendment) Bill, 2012, has recommended the introduction of the Bill in Lok Sabha under clause (1) of article 117 of the Constitution of India.

Notes on clauses

Clause 1.— This clause provides for the short title and commencement of the proposed legislation.

Clause 2.— This clause seeks to define the expressions "Company" and "housing finance institution" for the purposes of the National Housing Bank Act, 1987 (the Act) to cover such housing finance institutions which partly transacts the business of housing finance and has one of its principal objects the transacting of business of providing finance for housing.

Clause 3.— This clause seeks to amend section 3 of the Act relating to establishment and incorporation of the National Housing Bank. It is proposed to amend sub-section (3) of section 3 so as to reflect the change of name of Bombay to Mumbai and also provide that the head office of the Bank shall be at such other place as the Central Government, by notification, may specify.

Clause 4.— This clause seeks to amend section 4 of the Act relating to capital of the National Housing Bank. Under the existing provision, the Central Government in consultation with the Reserve Bank is authorised to increase the authorised capital of the National Housing Bank up to two thousand crores rupees. It is proposed to substitute proviso to sub-section (1) of section 4 of the Act to provide that the Central Government may, by notification, increase the authorised capital to such amount as may be specified in the notification, from time to time.

Clause 5.— This clause seeks to insert new section 4A relating to transfer of capital to Central Government and a new section 4B relating to payment of amount to the Reserve Bank.

The proposed new section 4A provides transfer and vesting of the issued capital of the National Housing Bank of the face value of four hundred fifty crore rupees in the Central Government from the commencement of the proposed legislation.

The proposed new section 4B provides for payment in cash by the Central Government to Reserve Bank of an amount equal to the face value of the subscribed capital of the National Housing Bank consequent upon the transfer and vesting of such capital in the Central Government in terms of provision of new section 4A.

Clause 6.— This clause seeks to amend section 6 of the Act relating to composition of the Board of Directors.

The existing provisions contained in clause (d) of sub-section (1) of section 6 of the Act, provides for two directors from out of the directors of the Reserve Bank nominated on the Board of the National Housing Bank. It is proposed that there shall be one director to be nominated by the Reserve Bank on the Board of the National Housing Bank and such director need not be a director of the Reserve Bank.

In terms of the existing provision contained in sub-section (2) of section 6 of the Act, the Chairman and the Managing Director and the other directors (excluding the elected director and nominated director) are required to be appointed by the Central Government in consultation with the Reserve Bank. It is proposed to amend sub-section (2) of section 6 to provide that the director other than the nominated and elected director shall be appointed by the Central Government and the Chairman and the Managing Director shall be appointed by the Central Government in consultation with the Reserve Bank.

Clause 7.—This clause seeks to amend section 7 of the Act relating to terms and conditions of appointment of Chairman and Managing Director and other directors. The

existing provision contained in sub-section (5) of the Act provides that the directors shall be paid prescribed fee for attending the meeting of the Board or its Committees. There is no such fee payable to a director who is an official of the Government or a director of the Reserve Bank. It is proposed that no such fees shall be payable to the official of the Reserve Bank.

Clause 8.—This clause seeks to amend section 14 of the Act relating to the business of the National Housing Bank.

Clause (b) of this section is proposed to be amended to insert "non-banking financial companies" to enable the National Housing Bank to give refinance to such companies against their loans for housing activities. It is also proposed to insert an *Explanation* in clause (b) to define the expression "housing activities" to include acquisition, construction, reconstruction, purchase, repair or renewal of a residential house and all off site and on site housing related activities or incidental thereto.

Clause (ea) of section 14 enables the National Housing Bank to buy or sell mortgages of housing finance institutions or banks. It is proposed to amend the clause to buy or sell such mortgages of any institution.

Clause (f) of section 14 is also proposed to be amended to enable the National Housing Bank to promote mortgage guarantee companies, securitisation companies, reconstruction companies and credit information companies.

Clause (k) of section 14 of the Act providing for the powers of the National Housing Bank to give guidelines to the housing finance institutions to ensure their growth on sound lines is proposed to be omitted consequent to the proposed transfer of powers of regulation of such institutions to the Reserve Bank.

Clause 9.—This clause seeks to amend section 16 of the Act relating to borrowings by the National Housing Bank in foreign currency. It is proposed to amend sub-section (1) of section 16 of the Act so as to substitute the reference of "the Foreign Exchange Management Act, 1999" in place of "the Foreign Exchange Regulation Act, 1973".

Clause 10.—This clause seeks to amend section 16B of the Act relating to holding of amount and security in trust by the institutions borrowing from the National Housing Bank. It is proposed to amend sub-section (1) of this section to enable such institutions repay the amount borrowed by them from the National Housing Bank in accordance with the repayment schedule fixed by the said Bank.

It is also proposed to insert a new sub-section (3) to this section to provide that the amount received by the borrowing institution or the liquidator against the refinanced loans shall be passed on to the National Housing Bank. Further, the National Housing Bank shall be entitled to enforce the securities held by the borrowing institution in trust for it and the liquidator shall pass on such securities and contracts to the National Housing Bank.

Clause 11.—This clause seeks to amend the heading of Chapter V to reflect that the Chapter applies to housing finance institutions which are companies.

Clause 12.—This clause seeks to amend section 29A of the Act relating to requirement of registration and net owned fund of housing finance companies. It is proposed to confer powers relating to registration of housing finance companies which hitherto vested in the National Housing Bank to the Reserve Bank.

The existing clause (b) of sub-section (1) of section 29A of the Act provides for the requirement of net owned fund to twenty-five lakh rupees and confers powers on the National Housing Bank to specify such other higher amount as it may deem fit. It is proposed to confer such powers to the Reserve Bank.

Sub-section (2) of section 29A is proposed to be amended to confer powers upon the Reserve Bank for registration of housing finance companies. It is proposed to provide that the application pending with the National Housing Bank on the appointed date shall be

transferred to the Reserve Bank and the registration granted by the National Housing Bank before the commencement of the proposed legislation shall be deemed to have been granted under the new provision and such companies need not apply again to the Reserve Bank.

Sub-section (3) providing for fulfilment of the requirement of net owned fund by the companies in existence on the commencement of the National Housing Bank (Amendment) Act, 2000 within certain specified time is proposed to be omitted as the maximum period provided under that provision has already lapsed.

Consequential changes are proposed in sub-sections (4), (5), (6) and (7) to substitute the Reserve Bank in place of the National Housing Bank as to enable the Reserve Bank to grant or cancel the certificate of registration of the housing finance companies.

It is also proposed to amend the definition of "net owned fund" as contained in *Explanation* to section 29A by providing that the net owned fund shall be calculated by reducing therefrom the amounts representing the investment of such institution in the shares of all other non-banking financial companies as against the existing provision providing for reduction in all other housing finance institutions which are companies.

Clause 13.—This clause seeks to amend section 29B of the Act relating to maintenance of certain percentage of assets in liquid assets by housing finance companies accepting deposits. It provides that higher percentage of investment in liquid assets shall now be prescribed by the Reserve Bank instead of the National Housing Bank. A proviso is also proposed to be inserted to sub-section (3) to provide for furnishing of a copy of the return by the housing finance companies to the Reserve Bank. These amendments are consequent upon the transfer of regulatory powers to the Reserve Bank while continuing supervision with the National Housing Bank.

Clause 14.—This clause seeks to amend section 29C of the Act relating to creation of a reserve fund by the housing finance companies and transferring certain specified sum out of its profits to such fund every year. It is proposed to amend sub-section (2) of this section to provide that the purpose for which such fund can be appropriated shall be specified by the Reserve Bank and such appropriation shall also be reported to that Bank. Consequential changes are also proposed in sub-section (3) of this section.

Clause 15.—This clause seeks to substitute section 30 of the Act relating to powers of the National Housing Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money to confer such powers on the Reserve Bank.

Clause 16.—This clause seeks to substitute section 30A of the Act relating to powers of the National Housing Bank to determine policy and issue directions to confer such powers on the Reserve Bank.

Clause 17.—This clause seeks to substitute section 31 of the Act relating to power of the National Housing Bank to collect information from housing finance institutions as to deposits and give directions. It is proposed to provide that a copy of the statement, information or particulars furnished to the National Housing Bank shall also be submitted to the Reserve Bank. Sub-clause (4) makes provision to confer powers on the Reserve Bank to give directions to the housing finance companies relating to or connected with the receipt of deposits. Sub-clauses (5) and (6) makes provisions to confer powers on the National Housing Bank and the Reserve Bank to prohibit acceptance of deposits by a housing finance companies if it fails to comply with the direction given by the Reserve Bank. Sub-clause (7) makes provision to confer powers on the National Housing Bank to direct a housing finance company to supply copy of its annual statements to its depositors in certain circumstances.

Clause 18.—This clause seeks to substitute section 32 of the Act relating to duty of housing finance institutions to furnish statements, etc., required by National Housing Bank. It is proposed to provide that every housing finance company shall furnish the statements, information or particulars called for and to comply with any direction given to it under the provisions of this Chapter and to do away with the requirement of framing of regulation for calling of such information.

Clause 19.—This clause seeks to substitute section 33 of the Act relating to power and duties of auditors of housing finance companies. It is proposed to amend sub-section (1) of this section to provide that the auditors of the housing finance companies shall also enquire from such companies as to whether they have furnished the required information also to the Reserve Bank in addition to the National Housing Bank and if not shall also make a report to the Reserve Bank. It is further proposed to amend sub-section (1A) to confer powers on the Reserve Bank to give directions to the auditors of the housing finance companies in relation to balance sheet, profit and loss account, etc. It is also proposed to amend sub-section (2) to provide that the report to be made to the Reserve Bank shall also be included in the report to be made under sub-section (2) of section 227 of the Companies Act, 1956. It is also proposed to amend sub-sections (3) and (4) to confer power upon the Reserve Bank to order special audit in certain circumstances and fix the remuneration of such auditors.

Clause 20.—This clause seeks to substitute section 33A of the Act relating to power of the National Housing Bank to prohibit acceptance of deposit and alienation of assets. It is proposed to confer such powers also on to the Reserve Bank consequent to transfer of regulation to the Reserve Bank. It provides for exercise of powers by the Reserve Bank and the National Housing Bank to prohibit acceptance of deposits by housing finance companies in certain circumstances. It further provides to confer powers upon the National Housing Bank to prohibit alienation of assets by housing finance companies for a period of six months from the date of prohibitory order.

Clause 21.—This clause seeks to amend section 33B of the Act relating to winding up of housing finance companies. Clause (c) of sub-section (1) of this section provides for filing of application for winding up by the National Housing Bank where that Bank is satisfied that the housing finance company has been prohibited by the National Housing Bank from receiving deposits by an order and such order has been in force for a period of not less than three months. It is proposed to amend this provision to include such orders may also be passed by the Reserve Bank. The existing provision of sub-section (3) requires the National Housing Bank to send a copy of the application for winding up made by it to the Registrar of Companies. It is proposed to amend this sub-section to provide that a copy of such application shall also be made to the Reserve Bank.

Clause 22.—This clause seeks to amend section 34 of the Act relating to inspection of housing finance companies. The existing provision of this section confers powers of inspection only in respect of companies accepting deposits. It is proposed to amend this section to confer powers relating to inspection of all the housing finance companies.

It is further proposed to insert new sub-sections (4) and (5) to this section to provide that a copy of the report of inspection shall be submitted by the National Housing Bank to the Reserve Bank and the powers of inspection referred to in this section exercisable by the National Housing Bank can also be exercised by the Reserve Bank, where it consider necessary to do so.

Clause 23.—This clause seeks to amend section 35 of the Act providing that the deposits not to be solicited by unauthorised persons. It is proposed to amend this provision so as to clarify that the same applies to the housing finance institutions which are companies and the prospectus or advertisement made by the companies complies with the orders made by the Reserve Bank and is consequential to the amendment of section 30 of the Act.

Clause 24.—This clause seeks to amend section 35A of the Act relating to disclosure of the information. It is proposed to amend this provision to clarify that the same applies to the information collected from housing finance institutions which are companies. It is further proposed to apply the provision of the section to information furnished to the Reserve Bank in addition to the National Housing Bank.

Clause 25.—This clause seeks to substitute section 35B of the Act relating to power of the National Housing Bank to exempt any housing finance institution from the applicability of Chapter V. It is proposed to confer such power on the Reserve Bank consequent to transfer of regulatory powers to that Bank. It is also proposed to provide that every order made under this section shall be laid before each House of Parliament.

Clause 26.—This clause seeks to amend section 36A of the Act relating to power to order repayment of deposits. The existing provision of sub-section (2) of this section confers powers on the officers of the National Housing Bank authorised by the Central Government for this purpose to order such repayment where the housing finance companies have failed to do so. It is proposed to substitute sub-section (2) of this section to confer such powers on the Company Law Board as in the case of the depositors of the non-banking financial companies referred to in the Reserve Bank of India Act, 1934.

Clause 27.—This clause seeks to amend section 36B of the Act relating to nomination by the depositors. It is proposed to amend this section to clarify that the same applies to the depositors of housing finance institutions which are companies.

Clause 28.—This clause seeks to omit Chapter VA of the Act containing special provisions for recovery of over dues of the approved institutions.

Clause 29.—This clause seeks to amend section 37 of the Act relating to establishment of General Fund and other Funds by the National Housing Bank. The existing provision of sub-section (2) of this section provides for creation of a special fund or a reserve fund also on the direction of the Reserve Bank. It is proposed to amend this section to make provisions for creation of such fund on the direction of the Central Government.

Clause 30.—This clause seeks to amend sub-section (2) of section 38 so as to change the present annual closing date of books of accounts as March 31st each year in place of June 30th each year.

Clause 31.—This clause seeks to substitute section 39 of the Act relating to disposal of surplus. It is proposed to provide that the surplus shall be transferred to the Central Government in case it holds the whole of the issued capital of the National Housing Bank and in other cases to the Central Government and any other person holding the issued capital proportionately as may be decided by the Board.

Clause 32.—This clause seeks to amend section 40 of the Act to provide for appointment of the auditors of the National Housing Bank by the Central Government in consultation with the Reserve Bank instead of appointment by the Reserve Bank.

Clause 33.—This clause seeks to amend section 41 of the Act to provide furnishing of the return also to the Central Government in addition to the Reserve Bank.

Clause 34.—This clause seeks to amend section 42 of the Act relating to preparation of the Annual Report on housing by the National Housing Bank. It is proposed to insert new sub-sections (2) and (3) to this section to enable the National Housing Bank to call for any information relating to housing from any institution or organisation and to provide that it shall be duty of such institution to furnish such information.

Clause 35.—This clause seeks to amend section 44 of the Act to apply the obligation relating to fidelity and secrecy also to the Reserve Bank.

Clause 36.—This clause seeks to amend section 46 of the Act to extend the protection in respect of action taken under this Act also to the Reserve Bank.

Clause 37.—This clause seeks to amend section 49 of the Act relating to penalties. Sub-section (2B) is proposed to be amended consequent to the amendment of section 33. Sub-section (2C) is proposed to be amended consequent to the amendment of section 36A. Sub-section (3) is proposed to be amended consequent to the amendment of section 33A.

Clause 38.—This clause seeks to amend section 51 of the Act relating to cognizance of offences. It is proposed to include the application to be made by the officers authorised by the Reserve Bank. It is further proposed to provide that the Magistrate may dispense with the personal attendance of the officers of the Reserve Bank as in the case of the National Housing Bank.

Clause 39.—This clause seeks to amend section 52 of the Act relating to application of fine. It is proposed to amend this section to clarify that the same applies to the housing finance institution which is a company.

Clause 40.—This clause seeks to substitute section 52A of the Act relating to imposition of penalty. It is proposed to confer powers upon the Reserve Bank and the National Housing Bank to impose monetary penalties.

Clause 41.—This clause seeks to omit section 54A of the Act and is consequent to the proposed omission of Chapter VA of the Act.

Clause 42.—This clause seeks to amend section 55 of the Act relating to the powers of the Board to make regulations. It is proposed to provide for making of regulations with the previous approval of the Central Government instead of previous approval of the Reserve Bank and in consultation of the Central Government. It is further proposed to omit clause (f) of sub-section (2) consequent to modification of section 32. It is also proposed to omit clauses (fa), (fb), (fc) and (fd) consequent to omission of Chapter VA.

Clause 43.—This clause seeks to amend section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and to insert in sub-section (1) in clause (m) any housing finance institution which is a company registered under section 29A of the National Housing Bank Act, 1987 to cover such institution for the purposes of the said Act.

FINANCIAL MEMORANDUM

Clause 5 of the Bill proposes to insert new sections 4A and 4B which provides for transfer and vesting of capital of the National Housing Bank to the Central Government and payment by the Central Government to the Reserve Bank an amount equal to the face value of the subscribed capital of the National Housing Bank.

2. The face value of the subscribed capital of the National Housing Bank as on date is four hundred fifty crore rupees which is required to be paid by the Central Government to the Reserve Bank of India if the proposed legislation is enacted and brought into force.

3. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to substitute the proviso to section 4 of the National Housing Bank Act, 1987 (the said Act) to enable the Central Government to increase the authorised capital to such amount as may be specified in the notification from time to time.

2. Clause 12 of the Bill seeks to amend section 29A of the Act which provides that the net owned fund of a housing finance company shall be two hundred lakhs rupees and empowers the Reserve Bank to specify higher amount from time to time.

3. Clause 13 of the Bill seeks to amend section 29B of the Act which requires a housing finance company to maintain certain percentage of its assets in unencumbered securities and specified term deposits. The proposed amendment confers power upon the Reserve Bank to increase, by notification, the limit of such investments.

4. Clause 25 of the Bill seeks to substitute section 35B which empowers the Reserve Bank to exempt, by notification, any housing finance company from the provision of Chapter V of the Act. It further provides that every such order shall be laid before each House of Parliament.

5. The matters in respect of which notification may be issued are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

T.K. VISWANATHAN,
Secretary-General.